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**Charles McMillan, CIPS, GRI**  
*President*

April 8, 2009

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 Seventh Street, SW, Room 10276  
Washington, DC 20410-0001

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Re: Docket No. FR-5180-F-05, Real Estate Settlement Procedures Act (RESPA): Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Further Deferred Applicability Date for the Revised Definition of "Required Use" and Solicitation of Public Comment on Withdrawal of Required Use Provision.

Dear Sir or Madam:

On behalf of the 1.2 million members of the National Association of REALTORS® (NAR), I am pleased to provide comments to the Department of Housing and Urban Development (HUD) on the definition of "required use" under HUD's published rule "To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Further Deferred Applicability Date for the Revised Definition of 'Required Use' and Solicitation of Public Comment on Withdrawal of Required Use Provision."

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,500 local associations or boards, and 54 state and territory associations of REALTORS®.

On March 10, 2009, HUD published a request for public comment on withdrawing the "required use" provision from the final RESPA rule and commencing new rulemaking on the definition of "required use." HUD states that new rulemaking would offer HUD the opportunity to present a new proposal based upon its reevaluation of the required use provision.

HUD published its final RESPA rule five months after publishing the proposed rule and after assessing 12,000 public comments. NAR had raised serious concerns about the proposed RESPA rule on grounds that it was anti-competitive and failed to achieve its stated goal of simplifying the process for consumers. In the final rule, however, the Department made a

number of concessions and changes to the rule requested by NAR. While the final rule is not perfect in NAR's view, the Department largely addressed NAR's concerns and produced a final rule that should ultimately benefit consumers.

With regard to "required use," NAR stated in its comment letter on the proposed rule that the required use definition had at least two unintended consequences:

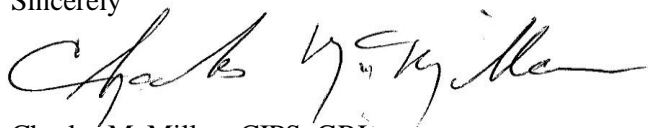
First, the rule authorizes discounts only on the prices/services of the recommended provider. This would limit the kind of non-price/services promotions that joint venture owners currently and permissibly offer to promote affiliates. Real estate agents and brokers currently offer a variety of inducements to clients to promote their services and NAR believes HUD did not intend to eliminate a practice which benefits consumers. For example, a real estate agent or broker might offer a client a gift certificate to local business or a free home inspection. Second, the rule would allow a discounted combination of settlement services only to a borrower. As sellers often pay the majority of settlement costs in a real estate transaction, NAR believes sellers should not be precluded from receiving discounts as incentives.

HUD eliminated both of these unintended consequences in the final rule. In fact, HUD incorporated many of the ideas and comments it received from NAR, consumers and other stakeholders in the settlement service industry. NAR applauds HUD for its handling of the RESPA rulemaking process in an open, inclusive and responsive manner.

In HUD's continuing review of the "required use" definition, NAR urges HUD to keep fully in mind the value of reasonable incentives offered to consumers through properly disclosed affiliated business arrangements. The problem is not these arrangements, but those who violate the rules. The answer is better education, guidance and robust enforcement.

In conclusion, NAR supports RESPA's policy objectives. We feel this can best be achieved if HUD focuses on its authority to eliminate kickbacks by expanding its regulatory enforcement efforts. It would also be of great value to industry and consumers alike to significantly expand HUD's guidance and education programs to promote compliance with the provisions of Regulation X.

Sincerely



Charles McMillan, CIPS, GRI  
2009 President, National Association of REALTORS®